

## NOTICE OF PROPOSED MODIFICATIONS

Pursuant to the requirements of Government Code section 11346.8(c), and section 44 of Title 1 of the California Code of Regulations, the Public Employment Relations Board (PERB) is providing Notice of Proposed Modifications to proposed regulations that were the subject of a public hearing on April 12, 2007. These proposed modifications are in response to public comments received regarding the initial rulemaking proposals.

The proposed modifications (attached) amend sections 32700, 32784, 61020, 61470, 81020, 81470, 91020, and 91470, and remove from the rulemaking package proposed new sections 32705, 61025, 81025, and 91025.

The proposed text, as published on February 16, 2007, showed new language in **bold**, and deletions by use of strikethrough (~~strikethrough~~). New language in the proposed revisions is in ***bold italics*** and new deletions are indicated by double strikethrough (~~~~double-strikethrough~~~~). Language previously recommended for deletion is double-underlined (double-underlined) where the language would be retained.

Any interested person, or his or her authorized representative, may submit written comments relevant to the proposed changes. Please limit any comments to the proposed modifications attached to this notice. The written comment period commences on June 12, 2007 and closes at 5:00 p.m. on August 10, 2007. Submit written comments to:

Les Chisholm, Division Chief  
Office of the General Counsel  
Public Employment Relations Board  
1031 18<sup>th</sup> Street  
Sacramento, CA 95814  
FAX: (916) 327-6377  
E-mail: LChisholm@perb.ca.gov

Any questions regarding the proposed action or the substance of the proposed regulations should be directed to Les Chisholm, as indicated above, or to

Tami R. Bogert, General Counsel  
Public Employment Relations Board  
1031 18<sup>th</sup> Street  
Sacramento, CA 95814  
(916) 327-8381.

New language in the proposed revisions is in ***bold italics*** and new deletions are indicated by double strikethrough (~~double strikethrough~~). Language previously recommended for deletion is double-underlined (double-underlined) where the language would be retained.

## PROPOSED MODIFICATIONS

### 32700. Proof of Support.

(a)(1) ~~Except as required in section 32770(b)(1), 34020(c), 34050, 40400(c), 51700, 51725, 71700, or 71725 proof~~ **Proof** of employee support for all petitions requiring such support **representation petitions, including decertification petitions, petitions for certification, requests for recognition, severance requests or petitions, and unit modification petitions,** shall clearly demonstrate that the employee desires to be represented by the **petitioning** employee organization for the purpose of meeting and negotiating or meeting and conferring on wages, hours and other terms and conditions of employment. ~~Proof of support submitted with a request or petition requiring recognition of the petitioning employee organization as the exclusive representative of affected employees without an election must also clearly demonstrate that the employee understands that an election may not be conducted.~~

(2) **Proof of employee support for a decertification petition filed pursuant to section 32770(b)(1) shall clearly demonstrate that the employee no longer desires to be represented by the exclusive representative.**

(3) **Proof of employee support for a rescission petition filed pursuant to section 34020(c), 40400(c), 51700 or 71700 shall clearly demonstrate that the employee desires a vote to rescind the existing organizational security arrangement.**

(4) **Proof of employee support for a reinstatement petition filed pursuant to section 34050, 51725 or 71725 shall clearly demonstrate that the employee desires to reinstate the organizational security provision.**

(b) The proof of support shall indicate each employee's printed name, signature, job title or classification and the date on which each individual's signature was obtained. An undated signature or a signature dated more than one calendar year prior to the filing of the petition requiring employee support shall be invalid for the purpose of calculating proof of support. Any signature meeting the requirements of this section shall be considered valid even though the signatory has executed authorizations for more than one employee organization.

(c) Any proof of support validly obtained within one year immediately prior to the date the petition or amendment requiring employee support is filed shall remain valid and may be used as proof of support to qualify for appearance on the ballot in an election, provided the employee's job classification is included in the unit in which the election is to be conducted.

(d) For purposes of determining proof of support, a joint petitioner may meet the required percentage by combining the total of the proofs of support for each of the employee organizations which make up the joint petitioner.

(e) Subject to subsections (a), (b), (c) and (d) of this section, proof of support may consist of any one of the following original documents or a combination thereof:

- (1) Current dues deduction authorization forms;
  - (2) Membership applications;
  - (3) Authorization cards or petitions signed by employees. The purpose of the petition shall be clearly stated on each page thereof;
  - (4) A notarized membership list, provided it is accompanied by the date of each member's signature on an enrollment form, membership application, or designation card or cards, supported by a declaration under penalty of perjury that the employee organization has on file the aforementioned documents which indicate the employee's desire to be represented by the employee organization. A sample of such signed forms shall accompany the list.
  - (5) Other evidence as determined by the Board.
- (f) Documents submitted to the board as proof of employee support shall remain confidential and not be disclosed by the board. ~~Neither the nature nor the size of the support shall be divulged to any party other than the petitioner, except to indicate whether the number of valid signatures submitted is adequate proof of support is sufficient.~~
- (g) Any party which contends that proof of employee support was obtained by fraud or coercion, or that the signatures on such support documents are not genuine, shall file with the regional office evidence in the form of declarations under penalty of perjury supporting such contention within 20 days after the filing of the petition which the proof of support accompanied. The Board shall refuse to consider any evidence not timely submitted, absent a showing of good cause for late submission. When prima facie evidence is submitted to the Board supporting a claim that proof of support was tainted by such misconduct, the Board shall conduct further investigations. If, as a result of such an investigation, the Board determines that the showing of support is inadequate because of such misconduct, the petition shall be dismissed.

Authority cited: Sections 3513, 3513(h), 3541.3, 3541.3(g), 3563 and 3563(f), Government Code, and Section 99561(f), Public Utilities Code. Reference: Sections 3513(h), 3515.7(d), 3520.5, 3544, 3544.1, 3544.3, 3544.5, 3544.7, 3546, 3573, 3574, 3575, 3576, 3577 and 3583.5, Government Code, and Sections 99561(c), (e), (k), (l), 99564, 99564.1, 99564.2, 99564.3, 99564.4 and 99566.1, Public Utilities Code.

**32705. Revocation of Proof of Support.**

- ~~(a) Proof of support documents submitted to the Board may only be withdrawn by an authorized representative of the petitioning party.~~
- ~~(b) Notwithstanding subsection (a), above, the Board shall honor a valid revocation of authorization that revokes an authorization signature submitted with a request or petition that may require recognition of the petitioning employee organization as the~~

~~exclusive representative of affected employees without an election. To be valid, the revocation must:~~

~~(1) Clearly demonstrate the employee's desire not to be represented by the petitioning employee organization for the purpose of meeting and conferring on wages, hours and other terms and conditions of employment.~~

~~(2) Be contained in an individual card or letter signed by the employee and furnished to PERB by the employee.~~

~~(3) Include the employee's name, signature, job title or classification and the date on which the employee signed the revocation.~~

~~(4) Be filed with PERB not later than the last day of the posting period applicable to the petition or request, or, with respect to a unit modification petition, within 15 workdays of the date proof of support is filed with the Board.~~

~~(e) The proof of support determination issued by the Board shall take into account all valid revocation requests but shall not disclose the identities of the employees involved.~~

~~Authority cited: Sections 3513, 3513(h), 3541.3, 3541.3(g), 3563 and 3563(f), Government Code, and Section 99561(f), Public Utilities Code. Reference: Sections 3513(h), 3515.7(d), 3520.5, 3544, 3544.1, 3544.3, 3544.5, 3544.7, 3546, 3573, 3574, 3575, 3576, 3577 and 3583.5, Government Code, and Sections 99561(e), (e), (k), (l), 99564, 99564.1, 99564.2, 99564.3, 99564.4 and 99566.1, Public Utilities Code.~~

32784. Board Determination Regarding Proof of Support.

(a) If proof of majority support has been filed pursuant to section 32781(e)(1) or (2), the employer shall, within 20 days of the date the petition was filed ~~as directed by the Board~~ *within 20 days of the date the support was filed*, file with the regional office an alphabetical list, including job titles or classifications, of all employees proposed to be added to the unit as of the last date of the payroll period immediately preceding the date the petition was filed with PERB, unless otherwise directed by the Board.

(b) The Board may allow up to 10 days to perfect the proof of support.

(c) Upon completion of the review of the proof of support, the Board shall inform the parties in writing of the determination as to sufficiency of the proof of support.

Authority cited: Sections 3513(h), 3541.3(e), (g) and 3563(e), (f), Government Code, and Section 99561(f), Public Utilities Code. Reference: Sections 3513(h), 3541.3(a), (e) and 3563(a), Government Code, and Section 99561(a), (e), Public Utilities Code.

61020. Proof of Support.

(a)(1) ~~Except as required in Section 61350(b)(1) or 61600, proof~~ **Proof** of employee support for all petitions requiring such support **representation petitions, including decertification petitions, petitions for certification, requests for recognition, severance requests or petitions, and unit modification petitions,** shall clearly demonstrate that the employee desires to be represented by the **petitioning** employee organization for the purpose of meeting and conferring on wages, hours and other terms and conditions of employment. ~~Proof of support submitted with a request or petition requiring recognition of the petitioning employee organization as the exclusive representative of affected employees without an election must also clearly demonstrate that the employee understands that an election may not be conducted.~~

(2) **Proof of employee support for a decertification petition filed pursuant to section 61350(b)(1) shall clearly demonstrate that the employee no longer desires to be represented by the exclusive representative.**

(3) **Proof of employee support for a rescission petition filed pursuant to section 61600 shall clearly demonstrate that the employee desires a vote to rescind the existing organizational security arrangement.**

(b) The proof of support shall indicate each employee's printed name, signature, job title or classification and the date on which each individual's signature was obtained. An undated signature or a signature dated more than one calendar year prior to the filing of the petition requiring employee support shall be invalid for the purpose of calculating proof of support. Any signature meeting the requirements of this section shall be considered valid even though the signatory has executed authorizations for more than one employee organization.

(c) Any proof of support validly obtained within one year immediately prior to the date the petition or amendment requiring employee support is filed shall remain valid and may be used as proof of support to qualify for appearance on the ballot in an election, provided the employee's job classification is included in the unit in which the election is to be conducted.

(d) Subject to subsections (a), (b) and (c) of this section, proof of support may consist of any one of the following original documents or a combination thereof:

(1) Current dues deduction authorization forms;

(2) Membership applications;

(3) Authorization cards or petitions signed by employees. The purpose of the petition shall be clearly stated on each page thereof;

(4) A notarized membership list, provided it is accompanied by the date of each member's signature on an enrollment form, membership application, or designation card or cards, supported by a declaration under penalty of perjury that the employee organization has on file

the aforementioned documents which indicate the employee's desire to be represented by the employee organization. A sample of such signed forms shall accompany the list.

(5) Other evidence as determined by the Board.

(e) Documents submitted to the board as proof of employee support shall remain confidential and not be disclosed by the board. ~~Neither the nature nor the size of the support shall be divulged to any party other than the petitioner, except to indicate whether the number of valid signatures submitted is adequate proof of support is sufficient.~~

(f) Any party which contends that proof of employee support was obtained by fraud or coercion, or that the signatures on such support documents are not genuine, shall file with the regional office evidence in the form of declarations under penalty of perjury supporting such contention within 20 days after the filing of the petition which the proof of support accompanied. The Board shall refuse to consider any evidence not timely submitted, absent a showing of good cause for late submission. When prima facie evidence is submitted to the Board supporting a claim that proof of support was tainted by such misconduct, the Board shall conduct further investigations. If, as a result of such an investigation, the Board determines that the proof of support is inadequate because of such misconduct, the petition shall be dismissed.

Authority cited: Sections 3509(a) and 3541.3(g), Government Code. Reference: Sections 3502.5, 3507, 3507.1, 3509 and 3541.3, Government Code.

~~61025.~~ ~~Revocation of Proof of Support.~~

~~(a) Proof of support documents submitted to the Board may only be withdrawn by an authorized representative of the petitioning party.~~

~~(b) Notwithstanding subsection (a), above, the Board shall honor a valid revocation of authorization that revokes an authorization signature submitted with a request or petition that may require recognition of the petitioning employee organization as the exclusive representative of affected employees without an election. To be valid, the revocation must:~~

~~(1) Clearly demonstrate the employee's desire not to be represented by the petitioning employee organization for the purpose of meeting and conferring on wages, hours and other terms and conditions of employment.~~

~~(2) Be contained in an individual card or letter signed by the employee and furnished to PERB by the employee.~~

~~(3) Include the employee's name, signature, job title or classification and the date on which the employee signed the revocation.~~

~~(4) Be filed with PERB not later than the last day of the posting period applicable to the petition or request, or, with respect to a unit modification petition, within 15 workdays of the date proof of support is filed with the Board.~~

~~(e) The proof of support determination issued by the Board shall take into account all valid revocation requests but shall not disclose the identities of the employees involved.~~

~~Authority cited: Sections 3509(a) and 3541.3(g), Government Code. Reference: Sections 3502.5, 3507, 3507.1, 3509 and 3541.3, Government Code.~~

61470. Board Determination Regarding Proof of Support.

(a) If proof of majority support has been filed pursuant to section 61450(e)(1) or (2), the employer shall, within 20 days of the date the petition was filed ~~as directed by the Board~~ *within 20 days of the date the support was filed*, file with the regional office an alphabetical list, including job titles or classifications, of all employees proposed to be added to the unit as of the last date of the payroll period immediately preceding the date the petition was filed with PERB, unless otherwise directed by the Board.

(b) The Board may allow up to 10 days to perfect the proof of support.

(c) Upon completion of the review of the proof of support, the Board shall inform the parties in writing of the determination as to sufficiency of the proof of support.

Authority cited: Sections 3509(a) and 3541.3(e) and (g), Government Code. Reference: Sections 3507, 3507.1, 3507.3, 3507.5, 3508, 3509 and 3541.3(a) and (e), Government Code.

81020. Proof of Support.

(a)(1) ~~Except as required in Section 81350(b)(1) or 81600, proof~~ **Proof** of employee support for all petitions requiring such support **representation petitions, including decertification petitions, petitions for certification, requests for recognition, severance requests or petitions, and unit modification petitions**, shall clearly demonstrate that the employee desires to be represented by the **petitioning** employee organization for the purpose of meeting and conferring on wages, hours and other terms and conditions of employment. ~~Proof of support submitted with a request or petition requiring recognition of the petitioning employee organization as the exclusive representative of affected employees without an election must also clearly demonstrate that the employee understands that an election may not be conducted.~~

(2) Proof of employee support for a decertification petition filed pursuant to section 81350(b)(1) shall clearly demonstrate that the employee no longer desires to be represented by the exclusive representative.

**(3) Proof of employee support for a rescission petition filed pursuant to section 81600 shall clearly demonstrate that the employee desires a vote to rescind the existing organizational security arrangement.**

(b) The proof of support shall indicate each employee's printed name, signature, job title or classification and the date on which each individual's signature was obtained. An undated signature or a signature dated more than one calendar year prior to the filing of the petition requiring employee support shall be invalid for the purpose of calculating proof of support. Any signature meeting the requirements of this section shall be considered valid even though the signatory has executed authorizations for more than one employee organization.

(c) Any proof of support validly obtained within one year immediately prior to the date the petition or amendment requiring employee support is filed shall remain valid and may be used as proof of support to qualify for appearance on the ballot in an election, provided the employee's job classification is included in the unit in which the election is to be conducted.

(d) Subject to subsections (a), (b) and (c) of this section, proof of support may consist of any one of the following original documents or a combination thereof:

(1) Current dues deduction authorization forms;

(2) Membership applications;

(3) Authorization cards or petitions signed by employees. The purpose of the petition shall be clearly stated on each page thereof;

(4) A notarized membership list, provided it is accompanied by the date of each member's signature on an enrollment form, membership application, or designation card or cards, supported by a declaration under penalty of perjury that the employee organization has on file the aforementioned documents which indicate the employee's desire to be represented by the employee organization. A sample of such signed forms shall accompany the list.

(5) Other evidence as determined by the Board.

(e) Documents submitted to the board as proof of employee support shall remain confidential and not be disclosed by the board. ~~Neither the nature nor the size of the support shall be divulged to any party other than the petitioner, except to indicate whether the number of valid signatures submitted is adequate proof of support is sufficient.~~

(f) Any party which contends that proof of employee support was obtained by fraud or coercion, or that the signatures on such support documents are not genuine, shall file with the regional office evidence in the form of declarations under penalty of perjury supporting such contention within 20 days after the filing of the petition which the proof of support accompanied. The Board shall refuse to consider any evidence not timely submitted, absent a showing of good cause for late submission. When prima facie evidence is submitted to the Board supporting a claim that proof of support was tainted by such misconduct, the Board shall



conduct further investigations. If, as a result of such an investigation, the Board determines that the proof of support is inadequate because of such misconduct, the petition shall be dismissed.

Authority cited: Sections 3541.3(g) and 71639.1(b), Government Code. Reference: Sections 3541.3, 71632.5, 71636, 71636.3, 71637, 71637.1 and 71639.1, Government Code.

**81025. Revocation of Proof of Support.**

~~(a) Proof of support documents submitted to the Board may only be withdrawn by an authorized representative of the petitioning party.~~

~~(b) Notwithstanding subsection (a), above, the Board shall honor a valid revocation of authorization that revokes an authorization signature submitted with a request or petition that may require recognition of the petitioning employee organization as the exclusive representative of affected employees without an election. To be valid, the revocation must:~~

~~(1) Clearly demonstrate the employee's desire not to be represented by the petitioning employee organization for the purpose of meeting and conferring on wages, hours and other terms and conditions of employment.~~

~~(2) Be contained in an individual card or letter signed by the employee and furnished to PERB by the employee.~~

~~(3) Include the employee's name, signature, job title or classification and the date on which the employee signed the revocation.~~

~~(4) Be filed with PERB not later than the last day of the posting period applicable to the petition or request, or, with respect to a unit modification petition, within 15 workdays of the date proof of support is filed with the Board.~~

~~(c) The proof of support determination issued by the Board shall take into account all valid revocation requests but shall not disclose the identities of the employees involved.~~

~~Authority cited: Sections 3541.3(g) and 71639.1(b), Government Code. Reference: Sections 3541.3, 71632.5, 71636, 71636.3, 71637, 71637.1 and 71639.1, Government Code.~~

**81470. Board Determination Regarding Proof of Support.**

(a) If proof of majority support has been filed pursuant to section 81450(e)(1) or (2), the employer shall, within 20 days of the date the petition was filed ~~as directed by the Board~~ *within 20 days of the date the support was filed*, file with the regional office an alphabetical list, including job titles or classifications, of all employees proposed to be added to the unit as of the last date of the payroll period immediately preceding the date the petition was filed with PERB, unless otherwise directed by the Board.

(b) The Board may allow up to 10 days to perfect the proof of support.

(c) Upon completion of the review of the proof of support, the Board shall inform the parties in writing of the determination as to sufficiency of the proof of support.

Authority cited: Sections 3541.3(g) and 71639.1(b), Government Code. Reference: Sections 3541.3, 71636, 71636.3, 71637, 71637.1 and 71639.1, Government Code.

91020. Proof of Support.

(a)(1) ~~Except as required in Section 91350(b)(1) or 91600, proof~~ **Proof** of employee support for all ~~petitions requiring such support~~ **representation petitions, including decertification petitions, petitions for certification, requests for recognition, severance requests or petitions, and unit modification petitions,** shall clearly demonstrate that the employee desires to be represented by the **petitioning** employee organization for the purpose of meeting and conferring on wages, hours and other terms and conditions of employment. ~~Proof of support submitted with a request or petition requiring recognition of the petitioning employee organization as the exclusive representative of affected employees without an election must also clearly demonstrate that the employee understands that an election may not be conducted.~~

(2) **Proof of employee support for a decertification petition filed pursuant to section 91350(b)(1) shall clearly demonstrate that the employee no longer desires to be represented by the exclusive representative.**

(3) **Proof of employee support for a rescission petition filed pursuant to section 91600 shall clearly demonstrate that the employee desires a vote to rescind the existing organizational security arrangement.**

(b) The proof of support shall indicate each employee's printed name, signature, job title or classification and the date on which each individual's signature was obtained. An undated signature or a signature dated more than one calendar year prior to the filing of the petition requiring employee support shall be invalid for the purpose of calculating proof of support. Any signature meeting the requirements of this section shall be considered valid even though the signatory has executed authorizations for more than one employee organization.

(c) Any proof of support validly obtained within one year immediately prior to the date the petition or amendment requiring employee support is filed shall remain valid and may be used as proof of support to qualify for appearance on the ballot in an election, provided the employee's job classification is included in the unit in which the election is to be conducted.

(d) Subject to subsections (a), (b) and (c) of this section, proof of support may consist of any one of the following original documents or a combination thereof:

(1) Current dues deduction authorization forms;

(2) Membership applications;

(3) Authorization cards or petitions signed by employees. The purpose of the petition shall be clearly stated on each page thereof;

(4) A notarized membership list, provided it is accompanied by the date of each member's signature on an enrollment form, membership application, or designation card or cards, supported by a declaration under penalty of perjury that the employee organization has on file the aforementioned documents which indicate the employee's desire to be represented by the employee organization. A sample of such signed forms shall accompany the list.

(5) Other evidence as determined by the Board.

(e) Documents submitted to the board as proof of employee support shall remain confidential and not be disclosed by the board. ~~Neither the nature nor the size of the support shall be divulged to any party other than the petitioner, except to indicate whether the number of valid signatures submitted is adequate proof of support is sufficient.~~

(f) Any party which contends that proof of employee support was obtained by fraud or coercion, or that the signatures on such support documents are not genuine, shall file with the regional office evidence in the form of declarations under penalty of perjury supporting such contention within 20 days after the filing of the petition which the proof of support accompanied. The Board shall refuse to consider any evidence not timely submitted, absent a showing of good cause for late submission. When prima facie evidence is submitted to the Board supporting a claim that proof of support was tainted by such misconduct, the Board shall conduct further investigations. If, as a result of ~~such an~~ investigation, the Board determines that the proof of support is inadequate because of such misconduct, the petition shall be dismissed.

Authority cited: Sections 3541.3(g) and 71825(b), Government Code. Reference: Sections 3541.3, 71814, 71823 and 71825, Government Code.

~~91025.~~ ~~Revocation of Proof of Support.~~

~~(a) Proof of support documents submitted to the Board may only be withdrawn by an authorized representative of the petitioning party.~~

~~(b) Notwithstanding subsection (a), above, the Board shall honor a valid revocation of authorization that revokes an authorization signature submitted with a request or petition that may require recognition of the petitioning employee organization as the exclusive representative of affected employees without an election. To be valid, the revocation must:~~

~~(1) Clearly demonstrate the employee's desire not to be represented by the petitioning employee organization for the purpose of meeting and conferring on wages, hours and other terms and conditions of employment.~~

~~(2) Be contained in an individual card or letter signed by the employee and furnished to PERB by the employee.~~

~~(3) Include the employee's name, signature, job title or classification and the date on which the employee signed the revocation.~~

~~(4) Be filed with PERB not later than the last day of the posting period applicable to the petition or request, or, with respect to a unit modification petition, within 15 workdays of the date proof of support is filed with the Board.~~

~~(e) The proof of support determination issued by the Board shall take into account all valid revocation requests but shall not disclose the identities of the employees involved.~~

~~Authority cited: Sections 3541.3(g) and 71825(b), Government Code. Reference: Sections 3541.3, 71814, 71823 and 71825, Government Code.~~

91470. Board Determination Regarding Proof of Support.

(a) If proof of majority support has been filed pursuant to section 91450(e)(1) or (2), the employer shall, within 20 days of the date the petition was filed ~~as directed by the Board~~ *within 20 days of the date the support was filed*, file with the regional office an alphabetical list, including job titles or classifications, of all employees proposed to be added to the unit as of the last date of the payroll period immediately preceding the date the petition was filed with PERB, unless otherwise directed by the Board.

(b) The Board may allow up to 10 days to perfect the proof of support.

(c) Upon completion of the review of the proof of support, the Board shall inform the parties in writing of the determination as to sufficiency of the proof of support.

Authority cited: Sections 3541.3(g) and 71825(b), Government Code. Reference: Sections 3541.3, 71823 and 71825, Government Code.